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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,378	07/30/2003	Gianfranco D'Amato	GKS 397	8950
23474	7590	07/13/2006	EXAMINER	
FLYNN THIEL BOUTELL & TANIS, P.C.			GROSSO, HARRY A	
2026 RAMBLING ROAD			ART UNIT	
KALAMAZOO, MI 49008-1631			PAPER NUMBER	
			3727	

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/630,378

Applicant(s)

D'AMATO, GIANFRANCO

Examiner

Harry A. Grosso

Art Unit

3727

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 16 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,2,4-10,12-20,22-27 and 29-35.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
**NATHAN J. NEWHOUSE**  
**SUPERVISORY PATENT EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: the applicant's arguments have been considered but are not persuasive. The previous rejections are maintained.

Applicant argues that the containers of McLaughlin and Summons are not dimensionally stable. in response, the container of JP '777 is a collapsible container that is dimensionally stable and JP '777 as modified would be capable of acting in the way required by the limitation. A multilayer plastic blank would be capable of being formed into a tube that is dimensionally stable after shaping. The nature of the response of the container to force applied would depend on the product in the container and the amount of force applied.

in response to applicant's argument that there is no suggestion to combine the references, JP '777, McLaughlin and Summons are tube type containers, JP '777 is a laminate of stiff paper with polyethylene on both sides, McLaughlin and Summons are multilayer plastic laminates. McLaughlin is used to teach use of the multi-layer all plastic material and Summons is used to teach the use of multiple transparent layers. One of ordinary skill in the art would be knowledgeable in the use of multi-layer plastic laminates for tube type containers.

Applicant argues that Halligan does not disclose the same container as JP '777 as modified or the instant invention and would not result in a transparent container if combined with JP '777 as modified. In response, Halligan is relied upon to teach the concept of an air insulating layer between two layers of a similar container, the rest of the structure being provided by the other references.

Applicant argues that Beall does not disclose a collapsible container and use of Beall as a reference to obtain a lid for JP '777 is hindsight. In response, JP '777 discloses a lid for the container. Beall is used as a teaching that it is known to use a handle with a similar lid on a container.

Applicant argues that the rejection of claim 26 is improper since its limitations are not found in any of the references. In response, claim 26 requires that the print on the tube is only visible when the product has been removed from the tube. Applicant states this occurs when the print is of a corresponding color as the food in the container. A choice of print color represents optimization of a results effective variable, which involves only ordinary skill in the art as noted in the previous rejection.